

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 13-cv-00365-REB-CBS

DOUGLAS E. MILLER, and
FRANCES ELLEN MILLER, a/k/a F. ELLEN MILLER,

Plaintiffs,

v.

RONALD C. UNTERREINER,
HERBERT GRAETZ,
ROBERT E. MOSER,
JEFFREY UNTERREINER, CPA, and
BEGLEY YOUNG UNTERREINER & WHITE LLC,

Defendants.

**ORDER ADOPTING RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

The matters before me are (1) the magistrate judge's **Amended Recommendations on Pending Motions** [#73],¹ filed September 27, 2013; and (2) plaintiffs' **Objection to Amended Recommendations on Pending Motions** [#81], filed October 30, 2013. I overrule the objections, adopt the recommendations, and grant defendants' motion to transfer venue to the United States District Court for the Eastern District of Missouri.

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendations to which objections have been filed, and have considered carefully

¹ "[#73]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's electronic case filing and management system (CM/ECF). I use this convention throughout this order.

the recommendations, objection, and applicable caselaw. The recommendations are detailed and well-reasoned. The magistrate judge's analysis of the factors informing the court's decision whether to transfer this case to the United States District Court for the Eastern District of Missouri is cogent. By contrast, plaintiffs' arguments are unpersuasive. Although the magistrate judge discussed the principles embodied in the "first-filed" rule in making his recommendations, he did so within the broader context of determining whether transfer was warranted under 28 U.S.C. § 1404(a). Contrary to plaintiffs' arguments, I am not constrained to defer to the Missouri court's determination as to which of these two actions should proceed.²

Thus, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendations proposed by the magistrate judge should be approved and adopted.

THEREFORE, IT IS ORDERED as follows:

1. That the **Amended Recommendations on Pending Motions** [#73], filed September 27, 2013, are **APPROVED AND ADOPTED** as an order of this court;
2. That the objections of plaintiffs in their **Objection to Amended Recommendations on Pending Motions** [#81], filed October 30, 2013, are **OVERRULED**;
3. That the **Motion To Dismiss, Stay or Transfer on Behalf of Defendants Ronald C. Unterreiner, Herbert Graetz, Robert E. Moser, Joe Bullock, Jeffrey Unterreiner, CPA, and Begley Young Unterreiner & White LLC** [#32], filed April 15,

² Moreover, as the magistrate judge noted, plaintiffs presented no actual evidence to substantiate their bald assertion that the Missouri suit was an anticipatory filing.

2013, is **GRANTED IN PART** and **DENIED AS MOOT IN PART** as follows;

- a. That the motion is **GRANTED** to the extent it requests that this action be transferred to the United States District Court for the Eastern District of Missouri; and
- b. That otherwise, the motion is **DENIED AS MOOT**;
4. That pursuant to defendants' **Notice To Withdraw Motion To Dismiss**

Second Amended Complaint [#67], filed August 9, 2013, and the court's corresponding order granting that motion [#74], filed September 27, 2013, defendants' **Motion To Dismiss Second Amended Complaint** [#54], filed July 6, 2013, is

WITHDRAWN;

5. That all pretrial deadlines, the Trial Preparation Conference set March 28, 2014, at 3:30 p.m., and the jury trial set to commence April 14, 2014, are **VACATED**; and
6. That this case is **TRANSFERRED** to the United States District Court for the Eastern District of Missouri (111 South 10th Street, St. Louis, MO 63102).

Dated November 22, 2013, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge